UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,104	11/06/2001	Mike Vargo	PA2073US	8986

22830 7590 03/08/2006

CARR & FERRELL LLP
2200 GENG ROAD
PALO ALTO, CA 94303

EXAMINER	
DYKE, KERRI M	

ART UNIT	PAPER NUMBER
2667	

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/993,104	VARGO ET AL.	
	Examiner	Art Unit	
	Kerri M. Dyke	2667	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 November 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 November 2001* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: figure 10 elements 120 and 130. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claim 6 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 15 of prior U.S. Patent No. 6,167,060. This is a double patenting rejection. Claim 15 includes

the additional clause "wherein M is greater than or equal to 1," however this clause is inherent to claim 1. Both claims are for a method of reducing losses by dynamically increasing the redundancy, based upon network conditions, between 0 and M. If M was not greater than or equal to 1, then there would never be any redundancy and the utility of the claim would be lost.

Instant Application	Patent 6,167,060
A method for eliminating packet losses in an Internet telephone communication comprising the steps of:	A method for eliminating packet losses in an Internet telephone communication comprising the steps of:
• Receiving an Internet telephone call from a personal computer or a telephone;	• Receiving an Internet telephone call from a personal computer or a telephone;
• Digitizing said telephone call into a digital data stream;	• Digitizing said telephone call into a digital data stream;
• Determining a level of redundancy of a forward error correction algorithm based upon Internet conditions, the level of redundancy varying between k=0 and M; and	• Determining a level of redundancy of a forward error correction algorithm based upon Internet conditions, the level of redundancy varying between k=0 and M *wherein M is greater than or equal to 1*; and
• Applying said level of redundancy to a part of said digital data stream, wherein an i^{th} data packet is repeated k times in said digital data stream, and whereby aural data in the i^{th} data packet is duplicated to maintain the voice quality present prior to the packet loss	• Applying said level of redundancy to a part of said digital data stream, wherein an i^{th} data packet is repeated k times in said digital data stream, and whereby aural data in the i^{th} data packet is duplicated to maintain the voice quality present prior to the packet loss

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Guy et al. (US 5,940,479).

6. In regards to claim 1, Guy discloses a system architecture for an internet telephone gateway server (figure 2 element 101B), comprising: hardware for interfacing with the internet and a public switched telephone network (figure 2 elements 204 and 210); and software (figure 2 element 208) for connecting telephone calls between transmitters and receivers, said software having the capability of dynamically changing a level of redundancy of a forward error correction algorithm from packet-to-packet in a data stream so as to accommodate data dropouts, whereby aural data in a packet is entirely duplicated to maintain the voice quality present prior to the data dropout. Column 9 lines 4-7 disclose that the digital voice module 208 includes a voice enhancement unit 320 and lines 40-41 disclose that the enhancement unit performs forward-error-correction operations. Column 15 lines 45-48 discloses that the level of FEC is dynamically altered (between 0 and 1) depending upon network conditions. Column 16 lines 20-22 discloses that generally the user cannot detect the difference between original and reconstructed data.

7. In regards to claim 2, Guy discloses the system architecture of claim wherein said gateway server supports duplex voice transmission with a latency of less than 500 milliseconds. Column 18 lines 33-35 disclose a latency of less than 200 milliseconds.

8. In regards to claim 3, Guy discloses the system architecture of claim 1, wherein said software has the capability of dynamically varying the size or bundling of a data packet from packet-to-packet. Column 16 lines 39-54 discloses decreasing the size of packets depending upon traffic conditions.

9. In regards to claim 5, Guy discloses the system architecture of claim 1, wherein said software varies the size or bundling of data packets from packet- to-packet. Column 16 lines 39-54 discloses decreasing the size of packets depending upon traffic conditions.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guy et al. (US 5,940,479) in view of Astrin (US 6,026,082).

12. In regards to claim 4, Guy discloses the system architecture of claim 1, but not wherein said software has the capability of dynamically varying from one codec to another codec from packet-to-packet.

Astrin discloses dynamically varying codecs in figure 4 and column 7 lines 31-34. Figure 7 shows a flow chart of the monitoring process and when the decision to change codecs is

made. The process is described in column 11 line 4 – column 13 line 57. Figure 7 describes a situation in which the codec for all connections is changed at the same time, but column 17 lines 11-17 disclose changing on a per-conversation or per-unit basis as further non-limiting examples.

It would have been obvious to one of ordinary skill in the art to modify Guy's system in order to include Astrin's dynamic codec changes because doing so provides support for a large number of private, concurrent conversations with maximum quality, as taught by Astrin in column 2 lines 27-30.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Guha (US 5,699,369) and Ayanoglu et al. (US 5,600,663) discloses an adaptive FEC technique.

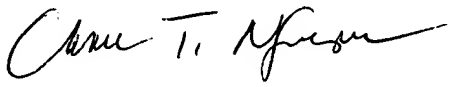
b. Riddle (US 6,175,856) and Sharma et al. (US 5,546,395) discloses monitoring network conditions and changing the codec in response to changing conditions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kerri M. Dyke whose telephone number is (571) 272-0542. The examiner can normally be reached on Monday through Friday, 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kmd



CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600